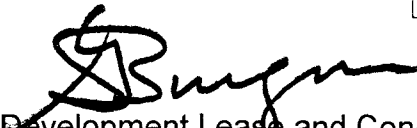


Date: May 3, 2005

RTC
Agenda Item No. 3 (F)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager



Subject: First Amendment to Development Lease and Concession Agreement with
JP Aviation Investments, Inc., at Opa-locka Airport

RECOMMENDATION

It is recommended that the Board approve the attached First Amendment to the Development Lease and Concession Agreement with J.P. Aviation Investments, Inc. (JPAI), which approves the joint development subleases with Turnberry Airport Hangars (Turnberry) and FBOSHELLAVOPF LCC (Shell). The subleases provide a vehicle for Turnberry and Shell to provide much needed fixed-base operations (FBO), including fueling, aircraft storage and maintenance facilities at Opa-locka Airport (OPF). The amendment increases the required minimum development investment on the premises from \$2 million to \$12 million, which will promote more intensive development of the property as a first step for more development throughout Opa-locka airport. The First Amendment provides for an initial term of the lease of thirty (30) years, with JPAI having the option of renewing the lease for two additional ten (10) year periods, provided JPAI is then in compliance with the lease. The First Amendment provides for an increase in the size of the Premises and completion of other projects by JPAI on the Premises. Moving forward with these developments will constitute an important anchor in the fulfillment of the Department's General Aviation Business Improvement Plan for OPF.

BACKGROUND

By Resolution No. R-266-98, approved by the Board on March 17, 1998, the Board approved a Development Lease and Concession Agreement (the Agreement) with JPAI under which JPAI committed to construct various facilities on designated portions of a 34.7-acre tract at OPF. The 1998 Agreement required JPAI to construct general aviation facilities, aircraft hangars, associated ramp, shops, fuel facilities, offices and a restaurant. Additionally, the lease included 26 existing T-hangars owned by the County, which JPAI was required to refurbish and maintain in lieu of rent on the T-hangars for the initial five-year term. The total contemplated investment was approximately \$2 million. Upon the completion of these improvements, the term of the agreement was to be extended for a total of 25 years for portions of the development and 35 years for other portions. All improvements and the required investment had to be completed by April 6, 2003.

To date JPAI has constructed some facilities to fulfill the investment contemplated by the original agreement. However, the construction of the facilities has raised numerous issues

regarding compliance with regulatory requirements. JPAI has constructed a four-tank fuel facility. Two tanks were constructed with proper building permits and are in service. The second set of tanks was installed without permits. JPAI constructed a 350' x 90' hangar that rests in a "no build" area established by the Federal Aviation Administration and blocks the line of sight from the Aircraft Control Tower to the intersection of runway 12/30 and its associated taxiway. Additionally, JPAI commenced use of the hangar for storage and maintenance without having obtained permits for a maintenance hangar or a Certificate of Occupancy for a storage hangar. JPAI has also refurbished and maintained the T-hangars, two of which were destroyed prior to the effective date of the lease in 1998 and two of which were destroyed in a July 3, 2002 tornado.

In December of 2001, the County advised JPAI that the lease agreement would be terminated because of failure to conduct its development in accordance with requirements in the agreement, citing among other things the developer's failure to obtain the required permits, bonds, insurance and licenses for its construction. JPAI responded by filing suit against the County alleging interference and misconduct among the County Departments in not cooperating with the developer and not providing necessary approvals on the construction plans. The County filed its answer and counterclaim, and discovery has taken place in the lawsuit.

Both JPAI and the County have engaged in protracted negotiations to settle the lawsuit. The Department believes that the proposed amendment provides the best vehicle to resolve those issues, but more importantly to allow development to move forward at Opa-locka Airport while establishing enhanced standards for development that have not previously been included in the development leases for OPF. The amendment further delineates the applicable standards and provides mechanisms to address issues that have arisen under the original lease.

Some of the major changes made through the amendment are described below.

- The amendment requires additional construction of not less than 196,000 square feet of aircraft storage/service hangars, including related support facilities and site work, office space, retail space, fixed based operation, restaurants, bays, storage bays and related ramp space. Building permits for such construction must be obtained within two (2) years from the effective date of the amendment, and the facilities must be constructed and Certificates of Occupancy and Use obtained for the facilities within five (5) years from the effective date.
- The commitments through the proposed sublease developments by Turnberry and Shell are expected to foster the completion of this much-needed construction of fixed based operations, aircraft storage, and aircraft maintenance services. Additional land has been added along the northern, western and southern boundaries to facilitate the layout of these operations.
- The extension of the Lease term to an initial term of thirty years with two ten-year renewals also provides that JPAI and the sublessees will start paying improvement rent

to 2 times the original term, the minimum investment requirement has been extended by more than 7 times the original requirement.

- To assure the Department that the level of development will be commensurate with the acreage and term of this lease and other development leases at the general aviation airports, the Department has established minimum development investment requirements. Under these standards the minimum investment requirement for general aviation development is \$10,000 per acre per lease year. This rate was established based on a survey by the Department and its appraiser of investment averages for general aviation development at other airports in Florida. Under this formula, JP would be required to invest not less than \$10,500,000 ($\$10,000 \times 34.7 \text{ acres} \times 30 \text{ years}$). JP, however, has committed to invest \$12,000,000.
- The minimum investment requirements must be met within 5 years from the effective date of the amendment. In the event that those investment requirements are not met, the First Amendment provides remedies for the County to proportionately take back undeveloped land, or reduce the term of the lease so that the Department's minimum investment criteria of \$10,000 per acre per lease year is met. The flexibility in options allows the County to determine the adjustment in a manner that best serves the airport's long-term growth.
- In exchange for the Lessee's agreement to commence payment of ground and pavement rents on the Turnberry sublease property and 50% of the Shell sublease property as of the effective date of the amendment, the County will be solely responsible for the cost of the work necessary to correct the line-of-sight concern raised by the placement of Lessee's 350 foot by 90 foot 5-bay hangar building. The cost is currently estimated to be \$660,000. The responsibility for the misplacement of the facility has been contested and is part of the ongoing litigation that will be dismissed as part of the Amendment and the settlement of the litigation.
- Land rent on the currently undeveloped portion of Phase 1 and the remaining portion of Phase 3 will begin, as areas within those phases are developed but not later than five years from the effective date of the Amendment. Land rent will be calculated at the applicable fair market appraised rental rate for land at OPF.
- The Amendment provides specified time frames for rectifying current permitting issues for existing facilities, and reinforces and further delineates standards for construction of new facilities on the premises. In an attempt to avoid the previous stalemates relating to the approval of building permits and building related approvals, either party may invoke an arbitration procedure in the event that such party claims that any actual or potential failure by such party to meet any such deadline is attributable to a delay substantially caused by the other party.

The Amendment also incorporates into the agreement, Minimum Business Standards for Commercial Operations at General Aviation Airports. The Standards are currently under development by the Department in consultation with the general aviation tenants. The Amendment also eliminates certain concession fees contained in the original agreement that may not be economical for general aviation commercial operations, but preserves the County's right to impose concession fees that are approved by the Board of County Commissioners and made specifically applicable to commercial operations at general aviation airports.


Assistant County Attorney

 3/30/05
Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: May 3, 2005

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Agenda Item No.

Veto _____

Override

RESOLUTION NO. _____

RESOLUTION APPROVING FIRST AMENDMENT TO DEVELOPMENT LEASE AND CONCESSION AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA, AND J.P. AVIATION INVESTMENTS, INC., FOR DEVELOPMENT AT OPA-LOCKA AIRPORT, CONDITIONAL UPON DISMISSAL OF PENDING STATE COURT ACTION; APPROVES ON A CONDITIONAL BASIS THE PROPOSED SUBLEASES BETWEEN THE TENANT AND TURNBERRY AIRPORT HANGARS, LLC AND FBOSHELLAVOPF

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the First Amendment to the Development Lease and Concession Agreement between the County and J.P. Aviation Investments, Inc., a copy of which is attached hereto, such approval being expressly conditional upon the dismissal with prejudice by both parties in the pending state court action styled *JP Aviation Investments, Inc., v. Miami-Dade County*, Case No. 02-14019 CA 08, and authorizes the County Manager and County Attorney to take all steps necessary and reasonable in the name of the County as required or permitted under the First Amendment, the Agreement, and the dismissal documents relating to the litigation; approves the proposed subleases between J.P. Aviation Investments, Inc., and both Turnberry Airport Hangars, LLC, and FBOSHELLAVOPF, expressly conditional upon amendment of the proposed subleases by

JP Aviation Investments, Inc., to accommodate the requirements of the County Manager and County Attorney.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of May, 2005. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk.

Approved by County Attorney as
to form and legal sufficiency. *T P A*

Thomas P. Abbott

(Draft of March 18,2005)

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT AND CONCESSION AGREEMENT
BETWEEN
MIAMI-DADE COUNTY, FLORIDA, AS LESSOR
AND
J.P. AVIATION INVESTMENTS, INC., AS LESSEE**

THIS FIRST AMENDMENT to Development Lease and Concession Agreement between Dade County, Florida (now Miami-Dade County, Florida), Lessor and J.P. Aviation Investments, Inc., as Lessee, Opa-locka Airport (the "Airport" or "OPF") is made and entered into as of this _____ day of _____, 2005 (the "Effective Date") by and between Miami-Dade County, a political subdivision of the State of Florida ("County") and JP Aviation Investments, Inc., a Florida corporation ("Lessee").

WHEREAS, the County and Lessee entered into that certain Development Lease and Concession Agreement ("Agreement") on March 17, 1998 with an effective date of April 7, 1998; and

WHEREAS, under the Agreement, JP was required to develop Phases 1A, 1B, 2A, 2B, and 3 in a manner prescribed for each Phase, and if JP completed certain required development in a timely manner, the Phases would continue on a leasehold basis for the following periods of time:

Phase 1A	25 years
Phase 1B	25 years
Phase 2A	35 years
Phase 2B	25 years
Phase 3	35 years; and

WHEREAS, the parties desire to amend the nature and timing of JP's development of the Premises and to divide the Premises into three parcels, consisting of Phase I, which is on the western side of the Premises, Phase II, which is on the northern side of the Premises, and Phase III, which is on the eastern side of the Premises;

WHEREAS, Lessee has entered into a sublease with Turnberry Airport Hangars, LLC ("Turnberry") under which Turnberry will construct maintenance hangar buildings on Phase II; and

WHEREAS, Lessee has entered into a sublease with FBOSHELLAVOPF LLC ("Shell") under which Shell will construct fixed based operator facilities on Phase III; and

WHEREAS, in order to accommodate the interests of Turnberry and Shell under their subleases and to comply with requirements and policies of the Federal Aviation Administration, the parties desire to amend the Agreement so as to (a) provide for Phases I, II, and III, (b) establish an initial lease term of thirty (30) years from the effective date of this First Amendment for all three Phases, with a right of renewal of two (2) additional ten (10) year periods upon mutual agreement of the parties, and (c) provide for Lessee's payment of rent on all three Phases as of the effective date of this First Amendment, among other terms and conditions that are set forth in this First Amendment;

WHEREAS, the Lessee understands and acknowledges that the obligations of the Agreement shall continue in full force and effect except as specifically modified herein.

NOW, THEREFORE, in express consideration of the foregoing Premises, and of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Article 1, entitled "Term and Premises," and Article 1.03(1), "Premises," are hereby deleted in its entirety and replaced with the following:

ARTICLE 1
LEASE OF PREMISES AND TERM

1.01 (A) Lease and Term : The County hereby leases to the Lessee and the Lessee leases from the County the premises set forth in Article 1.01(B) hereof (the "Premises"), for the purposes and uses set forth in Articles 2 (Use of Premises) and Article 4 (Improvements) hereof. The Initial Term shall commence on the date first written above (the "Effective Date"), with rental payments to be made on each portion of the Premises in accordance with the schedule provided in Article 3 below, and shall extend for a thirty (30) year period from the Effective Date. The Lessor and Lessee, by mutual agreement, may extend this lease for two (2) successive ten-year Renewal Terms, for a total of fifty (50) years under this lease agreement,

(B) Premises : The parties agree to re-structure the Phases under the original Agreement by creating a new Phase 2 on the north side of the leasehold to encompass the Premises to be covered by the Turnberry sublease (new "Phase 2"); and by creating a new Phase 3 on the east side of the leasehold to encompass the Premises to be covered by the FBOSHELLAVOPF sublease (new "Phase 3") and the remaining portion of the Premises on the western side to constitute Phase 1 (new "Phase 1"). The parties agree that Phase 1 may be divided into Phase 1A and Phase 1B as may be depicted on Exhibit 1. Such new Phases 1, 2, and 3 are depicted on **Exhibit A** hereto, and the legal description for which is provided on **Exhibit B** hereto. Such new Phases 1, 2, and 3 shall constitute the "Premises" under the Agreement. The parties agree that, for purposes of calculating minimum investment obligations of Lessee herein, the parties will refer to the Premises as consisting of approximately 34.7 acres even though the actual acreage as calculated from the legal description and survey may be different than 34.7 acres. Land rent shall be calculated based on the actual square footage of the Premises.

2. Article 1.02, entitled "Extensions and Development Schedule," consisting of Article 1.02A through Article 1.02(G) and Article 1.02(H)(1) are hereby deleted in their entirety and replaced with the following:

1.02 Development Schedule :

(A) The County agrees to waive any failure of Lessee to have developed the Premises in the manner set forth in Article 1 of the original Agreement.

(B) The parties agree that Exhibit B of the Agreement and the development schedules set forth in original Article 1 thereof shall be omitted in their entirety and replaced with the development schedule set forth in **Exhibit C** attached hereto.

3. Article 2.04 (Non-Flyable Aircraft) is hereby amended by changing thirty (30) days reflected therein to sixty (60) days.

3. Article 2 (Use of Premises) is hereby amended by adding the following thereto:

2.07 General Aviation Services : The parties agree that Lessee will be deemed to have complied with Article 2.02 of the Agreement relating to the Fixed Base Operator Services if Lessee

complies with the following: throughout the term of the Agreement, Lessee must provide the services set forth in Article 2.02, unless waived by MDAD, but that by no later than March 31, 2008, Lessee must complete the aircraft tie-down and automobile parking requirements (paved or unpaved), as reasonably determined by MDAD, along with aircraft arrival and departure guidance and aircraft parking services out of one single facility. In addition, by March 31, 2009, Lessee must have constructed a single facility, acceptable to MDAD and the FAA, that is suitable for pilots, passengers and guests and that contains restrooms for their use. By no later than March 31, 2010, Lessee must provide in such facility suitable aircraft distribution services, along with a flight and ground school operation. Except as specifically provided above, Lessee or an approved sublessee must construct, operate, and provide FBO services from the FBO facility or facilities in the manner set forth in the Aviation Department's Minimum Business Standards contained in **Exhibit D** hereto applicable to Fixed Base Operations at General Aviation Airports, as such standards are promulgated and amended from time to time.

3. Article 2.03(2) (Other Activities: Restaurant/Bar") is hereby amended as follows:

a. The term "Phase II(B)" as it appears in the third line of Article 2.03(2) is hereby deleted and replaced with the term "the Premises."

b. Article 2.03(2) is designated as "Article 2.03(2)(A)" and the following is hereby added as "Article 2.03(2)(B)":

2(B) The rent payable by Lessee for any restaurant/bar facility shall not include any percentage rent as provided in the original Agreement. However, the County shall have the right to impose a concession fee on the gross revenues from any restaurant/bar facility or other commercial operations conducted on the Premises if approved by ordinance or resolution applicable to such activities at the County's general aviation airports. The location, type, and operational attributes of any restaurant/bar shall be subject to the County's and the FAA's approval.

4. Article 3.01 (Annual Rents) is hereby deleted in its entirety and replaced with the following:

3.01 Annual Rentals :

(A) Ground Rent. Lessee shall commence paying the then-current ground and pavement rent that is applicable to Phases 1 (including subphases Phase 1A and Phase 1B), 2, and 3 as of the first day of the month that follows the Effective Date, including all applicable sales taxes; provided, however, that as to Phase 3, Lessee shall be required to pay only fifty percent (50%) of the applicable ground and pavement rent until the Date of Beneficial Occupancy ("DBO") of the facilities to be constructed thereon. The DBO date shall be the earlier of the date on which a temporary certificate of occupancy ("TCO") or a certificate of occupancy ("CO") is obtained for any permanent improvement of any size on Phase 3, or the date of which Lessee or any sublessee makes use, in whole or in part, of any such improvement for its intended purpose, or the date on which a TCO or CO could have been obtained if Lessee or its sublessee had used reasonable efforts to complete construction of the improvement.

(B) Improvement Rent. Lessee shall pay improvement rent, plus applicable sales taxes, on each facility and improvement constructed on the Premises effective as of the first day following thirty (30) years from the DBO of such facility or improvement. Improvement rent shall be in addition to Ground Rent, and shall be based on a fair market rental value appraisal of the facility or improvement as determined by the County using a qualified appraiser. If Lessee contests any such appraisal, the Lessee at its expense shall obtain its own appraisal of a qualified appraiser, and if the County does not accept such appraisal, the two appraisers shall select a third appraiser, the cost of whom shall be split between Lessee and the County, and the appraised value shall be the average of all three appraisals. Until Lessee contests the appraised value determination of the County, Lessee shall pay such appraised value until such time as an appraisal in accordance with this Article 6(b) is determined, which shall relate back to the improvement rental commencement date, with Lessee being entitled to a credit for any overpayment that it made during the appraisal period or being required to pay the difference between what Lessee paid during such period and the determined appraisal value. The terms of Article 3 shall apply to all payments of Improvement Rent.

(C) T-Hangar Rent. The parties acknowledge that Lessee has complied with its obligation under Article 1.02(A)(4)(b) to expend not less than \$20,000 per year over five years for a total of not less than \$100,000 for the refurbishment of the County's T-Hangars. Lessee agrees to pay, retroactive to April 7, 2003, prorated for that month, the monthly rent due for the County's T-hangars in accordance with the formula for calculating such rent as

set forth in Article 1.02(A)(4)(b) of the Agreement. The parties agree however that a credit against the T-Hangar rent pursuant to Article 1.02(A)(4)(b)(ii) shall accrue to the Lessee until the sum of \$93,000 is reached, which amount is the amount of insurance proceeds received by the County as a result of the damage to the T-Hangars in February 1998, and further, as provided in Article 1.02(A)(4)(b)(ii) of the Agreement, Lessee shall be given an additional credit against any rent due for all repairs, refurbishment or renovation ("repair cost") of the T-Hangars and any excess repair cost shall carry forward as a credit against future year(s) T-Hangar rent for so long as the T-Hangars remain on the Premises. The Aviation Department agrees to remove the T-Hangars from the Premises with one-year notice from the Lessee.

5. Article 3.02 (Advance Rental) is hereby amended by omitting the clause "(but separately as to Phases I(A), I(B), II(A), II(B), and III)" from the second line thereof. The parties acknowledge that Advance Rental is due on the rent for the entire Premises, including Improvement Rents when they become due on Improvements.

6. Article 4 (Improvements to Premises) is hereby amended by amending Article 4.02 (Design of Improvements) thereof to reflect that the design requirements apply to any phase of the Premises, no matter how designated.

7. Article 4.08(C), (Construction Bonds and Insurance Required), is hereby amended by adding the following thereto:

Provided, however, that whenever state law permits the County to accept a form of construction security other than separate performance and payment bonds, the County agrees to accept reasonably comparable security in the form of a letter of credit, cash deposits in escrow, or the like.

8. Article 4 (Improvements to Premises) is hereby amended by adding the following thereto:

4.12 Time to Construct New Facilities: Notwithstanding anything in the Agreement to the contrary, the Lessee is hereby granted a period of three (3) years from the Effective Date of this Amendment to complete the construction of all new hangar and other facilities on the Phase 2 and Phase 3 Premises and obtain Certificates of Occupancy or Use for all new construction (hereinafter referred to as the "New Build-Out Phase"). In addition, Lessee or its sublessees shall obtain building permits for such construction within one (1) year from the Effective Date of this

Amendment. Such three year period may be extended at the County's discretion if Lessee demonstrates that Lessee or its sublessees were unable to complete such construction because of circumstances beyond Lessee's or the sublessees' reasonable control. If Lessee fails to complete all new construction required in any Phase within the three year period of time, or within any extended period of time permitted by this Article 4.12, the County shall have the right to terminate Lessee's rights to continued use of the entire Phase upon County's written notification to Lessee of such termination.

4.13 Required New Facilities : Notwithstanding anything else in the Agreement to the contrary, Lessee's Minimum Development Investment for Phases 1, 2 and 3 shall be the construction of not less than 196,000 square feet of aircraft storage/service hangars, including related support facilities and site work, office space, retail space, fixed based operation, restaurants, bays, storage bays and related ramp space as more particularly described in the JP Aviation-Turnberry and JP Aviation-FBOSHELLAVOPF, LLC Subleases. Facilities on the Premises as of the Effective Date of this First Amendment shall not count toward such Minimum Development Investment.

4.14 Minimum Investment Requirements :

(A) Lessee acknowledges that the County has reviewed with commercial, industrial, and airport leasing experts the minimum level of investment that should be required at general aviation airports in order to justify a lease with a proposed tenant. The policy correlates the acreage of the Premises and the length of the lease with a minimum investment requirement of \$10,000 per acre. By way of example, if a prospective Lessee at a general aviation airport desired to lease 20 acres under a 30 year year lease, the Lessee would be required to make a minimum investment of \$6,000,000 (20 acres x 30 years x \$10,000).

(B) In accordance with such Policy, and in addition to the Minimum Development Investment under Article 9 of 196,000 square feet of facilities, Lessee shall be required to comply with the County's minimum investment obligation of \$10,000 per buildable/developable acre per lease year. The Premises consist of approximately 35 acres, less 250,000 square feet of non-developable Premises that should be deducted from the 35 acres because the 250,000 square feet are used for the interior aircraft movement area necessary for subleasee access to the public taxilane. Lessee therefore acknowledges its obligation to comply

with a minimum investment requirement of not less than \$10,250,000 (29.26 buildable acres x 35 years x \$10,000 per acre) no later than ten years from the Effective Date of this Amendment in all facilities constructed by Lessee and approved sub-tenants on the Premises. If Lessee and its sub-lessees fail to make such minimum investment requirement, then the County shall be entitled to take any or all of the following actions:

(1) A reduction of the length of term of this Agreement as to any Phase for which Lessee fails to make the required minimum investment; or

(2) A reduction of the acreage within any such Phase to remove undeveloped land.

(C) The County shall have the discretion to determine whether to (1) make a reduction in the acreage of a Phase or (2) make a reduction of the term, or a combination of either reduction in the discretion of the County. The County may make such determinations in the exercise of its reasonable judgment that will result in each Phase consisting of acreage and a term that are consistent with the County's goal of a \$10,000 investment per acre per year. In no event shall the term of any sub-lease approved by the County be reduced from its stated term for failure to meet this minimum investment requirement provided that the approved subtenants have constructed six hangars by no later than five years from the Effective Date of this Amendment, at a total cost of not less than \$6,000,000.

(D) In the event that the County shall take back any portion of the Premises that has an uncompleted facility on such portion, County shall have no liability or responsibility for payment of any compensation to Lessee as a result of a take back of any Phase, and as to any such Phase taken back by the County, the Lessee at its sole expense shall complete the construction of and obtain Certificates of Occupancy for all uncompleted facilities on the Premises or demolish them, within a reasonable period of time, at MDAD's discretion. As provided in Article 4.07 of the Agreement, title to all Improvements shall be in the name of the County upon their completion, and the parties shall take all reasonable steps to assure that title to any facility not demolished shall be in the name of the County as of the effective date of the take back of the Phase.

(E) From the effective date of the County's take-back of any such Phase or portion of a Phase, Lessee shall no longer be liable for payment of future land rents for such land, but shall remain

liable for any on-going obligations or liabilities as provided in the Agreement.

(F) For purposes of this First Amendment, and for purposes of determining the "approved improvement costs" of any facility to satisfy Lessee's minimum investment obligation provided herein, eligible approved improvement costs include the cost of design and construction which specifically apply to or arise out of the construction of the facility, including but not limited to all financing fees paid up to the time of beneficial occupancy, accounting fees, construction related insurance and bonds, and reasonable attorney's fees related to the design and construction activities incurred after the effective date of this First Amendment.

(G) At the times specified herein for the commencement of paying Improvement Rent, or at the termination of the Agreement as to any Phase or portion of any Phase for any reason and if Lessee or Lessee's subtenants continue occupying any facility within the terminated land, the Lessee shall be responsible for paying to MDAD Improvement Rent on each such facility. Improvement Rent shall be determined through an appraisal of the facility on an annual basis, and the annual fair market rental value of such facility based on the appraisal, plus applicable sales and other taxes, shall be paid by Lessee in addition to the land and pavement rent required to be paid under the Agreement.

4.15. Completion of Lessee's Existing Improvements : The County requires that Lessee construct a force main and pump station on the Premises to accommodate waste removal. Lessee shall obtain a revised permit for the construction of the force main and pump station as part of its existing permit for the 350' x 90' hangar on Phase 1. Lessee has been granted an extension of time until January 13, 2006 for the connection to a sewer system. Lessee shall complete the connection as required and shall complete design of such connection and submit its plans to the Aviation Department and DERM no later than August 14, 2005 and commence construction for the connection not later than October 14, 2005. If Lessee fails to commence construction by October 14, 2005, and such failure is due to causes within Lessee's reasonable control, then County may notify Lessee in writing that County has taken over the connection project and will perform the work at County's expense. Upon receipt of such notice, Lessee shall turn over to County all the design and construction documents applicable to the project, including assignments of any permits or authorizations that have been issued in Lessee's name for the project, all at no cost to the County. Lessee shall reimburse the

County for all of County's costs, including costs of County's departmental personnel in administering the project and obtaining permits and authorizations to perform the work in County's name, plus twenty-five percent of such total cost, as provided in Article 5.09 of the Agreement. County shall invoice Lessee for such costs plus the 25%, and Lessee shall pay County the amount of the invoice within thirty (30) days of Lessee's receipt of the invoice in order to avoid interest costs; alternatively, Lessee may pay County such invoice amount in equal payments over a three month period of time, such payments to include interest of one and a half percent (1 1/2%) per month on the unpaid balance. Lessee shall also obtain within thirty (30) days of the Effective Date of this First Amendment whatever permits, authorizations, or waivers are required by any governmental entity having jurisdiction over the structure that allows the subtenants of Lessee to occupy the 350' x 90' hangar in accordance with the conditions of any such permits, authorizations, or waivers.

4.16 Permits for Installation of Fuel System : Lessee shall provide documentation of permits or obtain all necessary permits for the installation of the fuel tanks that Lessee has installed on the Premises within three months from the Effective Date of this First Amendment.

4.17 New N1L Drawing : Lessee shall, within sixty (60) days of the date of this First Amendment, submit to MDAD either a revised drawing of Lessee's previously submitted drawing designated as N1L or a new drawing demonstrating the proposed development of the Premises.

4.18 FAA Approval : This First Amendment and the Revised Drawing N1L or its substitute shall be subject to the approval of the FAA.

4.19 Lessee's Acknowledgement of Compliance Requirements : Lessee acknowledges that it has the obligation under the Agreement to comply with all applicable federal, state and local requirements for its activities on the Premises. In particular, and not in derogation or substitution of any obligations set forth in or required by the Agreement, Lessee agrees that for a development project, Lessee shall comply with the following general requirements, unless otherwise directed in writing by MDAD:

- a. Obtain concept approval for the project from MDAD's Properties Division;

- b. Comply with MDAD's Tenant Airport Construction, Non-reimbursable project requirements (TAC-N) procedures for design and construction of facilities on the airport as applicable to general aviation facilities, a copy of which is contained as **Exhibit D**, and in particular, the submittal of drawings at the percentage completion levels determined by MDAD for specific projects, the last of which submittals shall consist of ten (10) sets of 100% complete drawings submitted to the assigned Project Manager in MDAD's Facilities Division, along with all other documents required by MDAD and MDAD's TAC-N procedures;
- c. Consult with MDAD's Planning Division to assure Lessee obtains FAA approval for the specific development project proposed by Lessee, with FAA approval to be provided on the FAA's Form 7460 or other form used by the FAA for this purpose, such approval to be obtained prior to the issuance of a Letter of Concurrence ("LOC") by MDAD;
- d. Assure that Lessee's architect/engineer and general contractor for a project or any portion thereof are licensed by the State of Florida and that the general contractor has submitted to MDAD's Project Manager copies of performance and payment bonds; provided, however, that to the extent that performance and payment bonds are not required for County projects under state law, such as currently described in Section 255.05, Florida Statutes 2002, such performance and payment bonds shall not be required of the Lessee; and provided further, that if state law permits the County to exercise discretion as to whether performance and payment bonds are required for projects of a certain dollar amount, the County agrees to exercise reasonable discretion as to any request of Lessee for an exemption, provided that Lessee comply with the conditions of such exemption as required by state and county law.
- e. Prior to issuance of the LOC, obtain and submit certifications of all required insurance coverages as set forth in the Agreement;
- f. After issuance of MDAD's LOC, obtain a building permit from the County's Building Department, based on Lessee's compliance with requirements of the County's

Fire Department, DERM, Water and Sewer Department, and any other County Department having jurisdiction over the project.

- g. Comply with MDAD requirements as to providing a contract completion bond for the project or any alternate financing document proposed by Lessee by which the County can be assured that a project will be funded and completed by Lessee, which may be in the form of a letter of credit, lien or security interest in a construction loan fund, or the like;
- h. Design and construct the project in accordance with the requirements of applicable federal, state and local governments, and not occupy or make use of the project until a certificate of occupancy is issued by the Building Department;
- i. Provide MDAD with all closeout submittal documents, including but not limited to the as-built drawings and other documents required in Article 4.09 of the Agreement; and
- j. Within three (3) months of the issuance of a Certificate of Occupancy for any facility, provide MDAD with a statement of costs applicable to such facility. Such statement shall be audited by an accountant reasonably acceptable by MDAD but paid for solely by Lessee, who shall determine such costs in accordance with generally accepted auditing procedures. Lessee acknowledges that failure to provide such audited costs shall render such costs ineligible for consideration as costs to meet the minimum investment obligation as to the Phase in which the facility is located.

4.20 Building Standards : The parties agree that the Agreement, including Articles 4.01 and 4.03, are hereby amended to reflect that Lessee shall be obligated to construct or cause the construction of all facilities on the Premises in accordance with applicable provisions of the then-current Building Code as well as any other design and construction standards then being used by the Aviation Department for the design and construction of facilities at General Aviation Airports.

4.21 Confirmation of the Parties' Obligation to Provide Cooperation : The Lessee acknowledges its obligations under state

and local law, to provide the County with timely and complete documents in order for the County's departments to review Lessee's development plans and give approvals or comments thereon. The Aviation Department confirms its obligation under Section 7.01(c)(3) of the Agreement to give full cooperation to Lessee or any sublessee necessary to obtain and/or hasten the obtaining of any required permit or license, provided that Lessee or the sublessee has submitted to the Aviation Department timely and complete documents in regard to the Lessee's request for a permit or license.

4.22 Arbitration for Delay : With regard to any provisions in this Agreement requiring Lessee to obtain, within certain specified dates or times, building permits, certificates of use or occupancy or other governmental approvals or acknowledgments for the construction of improvements on the Premises, in the event either party believes any actual or potential failure by such party to meet any such deadline is attributable to a delay substantially caused by the other party, it may invoke the following provisions for notification and resolution of any dispute. First, either party may so notify the other party in writing, specifying the reasons and amount of the delay it believes is reasonably attributable to the other party. The other party shall have 15 days from its receipt of the notice within which to agree, disagree or negotiate an acceptable extension of the deadline in question. If the other party disagrees or does not timely respond, the parties shall have an additional 15 days within which to agree on the appointment of a single arbitrator, qualified in construction delay issues, to resolve any dispute. The cost of the arbitrator shall be initially borne by the party invoking the arbitration procedure, with the ultimate cost being apportioned between the parties by the arbitrator based on the arbitrator's ultimate decision attributing responsibility for the delay. In the event the parties are unable to agree on the appointment of a single arbitrator, each party shall have an additional 10 days to appoint an arbitrator, the initial cost of whom shall be borne by the party appointing that arbitrator, and the two arbitrators shall consult and, if possible agree on the responsibility for any delay. If the two arbitrators are unable to agree, they shall jointly appoint a third arbitrator not otherwise affiliated with the either of the two arbitrators, the initial cost of whom shall be borne equally by each party and the decision of any two of the three arbitrators shall decide the matter. The ultimate cost for each arbitrator shall be apportioned based on the decision regarding responsibility for delay. The decision reached by the arbitrator(s) shall be binding on the parties.

4.23 Lessee's Acknowledgement of Acceptability of Site : Lessee acknowledges that the County has represented in Section 1.02(H) that the County has made no representation as to (a) the suitability of the Premises for Lessee's development activities and (b) the suitability of the infrastructure for Lessee's development activities. The parties acknowledge that Section 1.02(H) continues in full force and effect, and Lessee acknowledges that County shall have no responsibility for the presence of, or lack of, any infrastructure on the Premises, specifically including, but not limited to, the presence of a concrete subterranean vault or any utilities or utility corridors on or under the surface of the Premises, for all of which County shall have no responsibility to provide, remove or relocate.

8. Article 9 (Assignment, Transfer, Subletting and Ownership) is hereby amended by adding the following thereto:

9.05 Conditional Approval of Turnberry and Shell Subleases : The JP Aviation-Turnberry Sublease, the FBOSHELLAVOPF LLC Sublease, and related-non-disturbance agreements are hereby approved, except as noted in the comments provided by the County to Lessee in one or more letters or other documents. Until the County's comments are satisfied, in the County's reasonable discretion, the subleases will not be deemed to be approved.

9. Except as specifically amended herein, the terms of the original Lease Agreement shall continue to apply in full during the entire duration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

**BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA**

By: _____
County Manager

ATTEST:
Harvey Ruvin, Clerk

By: _____
Deputy Clerk

21

(SEAL)

J.P. AVIATION INVESTMENTS, INC.

By:

President

Print Name

ATTEST:

Corporate Secretary

Print Name

(CORP SEAL)

EXHIBIT A
DESCRIPTION OF PHASES 1, 2, AND 3
SEE PARAGRAPH 1.01(B)

EXHIBIT B

LEGAL DESCRIPTION OF PREMISES

SEE PARAGRAPH 1.01(B)

EXHIBIT C
DEVELOPMENT SCHEDULE
SEE PARAGRAPH 1.02(B)

EXHIBIT D
MINIMUM STANDARDS
SEE PARAGRAPH 2.07